APPENDIX B.

Judgment in Docket No. 9241, Blue, et al. v. U. S.

BEFORE: HICKS, SIMONS AND MCALLISTER, *JJ.*

APPEAL from the District Court of the United States for the Southern District of Ohio.

THIS CAUSE came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Ohio, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause as to Appellant Paul Secord be and the same is hereby reversed. It is further ordered that the judgment as to all other appellants be and is hereby affirmed.

APPENDIX C.

Judgment in Docket No. 9242, Clark, et al. v. U. S.

BEFORE: HICKS, SIMONS AND MCALLISTER, *JJ.*

APPEAL from the District Court of the United States for the Southern District of Ohio.

THIS CAUSE came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Ohio, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause as to Appellants L. A. Cratty and C. O. Willey be and the same is hereby reversed. It is further ordered that the judgment as to all other appellants be and is hereby affirmed.

APPENDIX D.

Judgment in Docket No. 9243, Pardee, et al. v. U. S.

BEFORE: HICKS, SIMONS AND MCALLISTER, *JJ.*

APPEAL from the District Court of the United States for the Southern District of Ohio.

THIS CAUSE came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Ohio, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause as to Appellants G. F. Stott and William L. Rucker be and the same is hereby reversed. It is further ordered that the judgment as to all other Appellants be and is hereby affirmed.

APPENDIX E.

Order Denying Petitions for Rehearing, Docket Nos. 9241, 9242 and 9243.

(Entered February 9, 1944 by Thomas F. McAllister, Circuit Judge.)

BEFORE: HICKS, SIMONS AND MCALLISTER, *Circuit Judges.*

Appellants' petitions for rehearing include, among other grounds, a challenge to the correctness of facts recited in the opinion. Since many statements in the petitions consist of unqualified denials that there was any proof to support such recitals, and because of the extensive record, comprising approximately 5700 typewritten pages, it is deemed proper, in view of apparently honest misapprehension of counsel, to dispose seriatim of the principal challenges in this regard, for guidance in any further proceedings in the case.

It is stated that there is no proof to sustain the recital that statements were made by salesmen that the Government was behind the cemetery projects and that the State had provided the cemetery plan for people who needed income investments. A review of the testimony in the record, verifies the correctness of the challenged recital in the opinion.[1] Furthermore, it is claimed that the reference in the opinion to the fact that lots were sold for utility purposes at $125 per lot is not true nor supported by the evidence. While the foregoing matter was only referred to, in describing the scheme in general, and a misstatement of the kind alleged would be of no consequence in the determination of the issues, this claim of appellants, upon an examination of the record, is also found to be without foundation.[2] As to assets in the perpetual-care funds, the Pumphrey note was, from all the evidence in the case, worthless; and, in any event, such an item would be neither important nor controlling in consideration of a petition for rehearing. With regard to the statement that appellant Blue did not work for Forest Glen after June 9, 1936, and that, therefore, his

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[1] Record—pp. 1717, 2947, 2960.

[2] *Id.*—pp. 3621, 3944, 3971, 4196, 4229, 4301.

conviction should be reversed, as in the case of certain other appellants, it may be said that, as distinguished from the showing with reference to appellants whose convictions were reversed, there was no evidence that Blue's connection with the enterprise ever ceased prior to indictment; and it is not incumbent upon the court, on this question, to search the record to establish the date of his latest association with the scheme. It may be remarked, however, that the statement in the petition for rehearing as to his last connection with the venture, is erroneous, inasmuch as it clearly appears he was associated in the sale of lots for investment as late as, approximately, the first of November, 1937.[3] The law in presumption of innocence and burden of proof was properly submitted to the jury by the trial court. Questions with regard to the propriety of inferences to be drawn by the jury from the evidence, are disposed of in the opinion heretofore rendered. Other complaints and arguments suggested by counsel are not meritorious. Affidavits and a motion filed subsequent to the petitions herein, have been considered, and do not warrant any change in our determination.

The Government's petition for rehearing is founded upon arguments already passed upon in the opinion.

The petitions for rehearing filed on behalf of the appellants and the Government are denied.

Approved for entry.

(Signed) THOMAS F. MCALLISTER,
United States Circuit Judge.

Filed: Feb. 9th, 1944.

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[3] *Id.*—p. 294.

APPENDIX F.

A. Pertinent Provisions of the United States Constitution.

Article I. Section 10.

No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Amendment V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; or shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

B. Acts of Congress.

U. S. C. A. TITLE 18, SECTION 88; FORMERLY R. S. 5440; CR. CODE SEC. 37.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

U. S. C. A. TITLE 18, SECTION 338. FORMERLY SEC. 215 CR. CODE; R. S. 5480.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, bank note, paper money, or any obligation or security of the United States, or any state, territory, municipality, company, corporation, or person, or anything represented to be or intimated or held out to be such counterfeit or spurious article, or any scheme or artifice to obtain money by or through correspondence, by what is commonly called the "saw-dust swindle," or "counterfeit money fraud," or by dealing or pretending to deal in what is commonly called "green articles," "green coin," "green goods," "bills," "paper goods," "spurious treasury notes," "United States goods," "green cigars," or any

other names or terms intended to be understood as relating to such counterfeit or spurious articles, shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post-office or station thereof, or street or other letter box of the United States, or authorized depository for mail matter, to be sent or delivered by the post-office establishment of the United States, or shall take or receive any such therefrom, whether mailed within or without the United States, or shall knowingly cause to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

The following section is claimed by the government to be applicable.

PRINCIPALS.

SEC. 550. CR. CODE 332.

Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces or procures its commission, is a principal. (R. S. 5223, 5427; March 4, 1909, C321. Sec. 332, 35 Stat. 1152.)

C. Sections of the General Code of Ohio.

Relating to cemetery associations, cemeteries, graveyards, sale of the same for profit and exemption from taxation. In force at time complained of herein.

GENERAL CODE SEC. 5350, GRAVEYARDS.

Lands used exclusively as graveyards or grounds for burying the dead, except such as are held by a person, company or association with a view to profit, or for the purpose of speculating in the sale of, shall be exempt from taxation. (R. S. 2732, 99 O. L. 449; 91 O. L. 393, 216; 88 O. L. 39, Sec. 3; S. and S. 761; S. and C. 1440.)